

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 114-122, 124-126, 128-141, 143-145, 147-155, 157-161, 163-173, 175-179, and 181-202 are pending in the application, with claims 114, 133, 153, and 171 being the independent claims. Claims 114, 133, 153, and 171 are sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested. Applicant respectfully requests entry of the above amendment in order to place the claims in better form for consideration on appeal.

Applicant respectfully requests that the amendments be entered as they are merely presenting the rejected claims in better form for allowance or consideration on appeal should the Examiner maintain the rejection.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 103

Kleinerman, RIPscrip, Microsoft, and Zellweger

Claims 114, 116-122, 124-126, 128-131, 133-141, 143-145, 147-150, 152, 153-155, 157-161, 163-172, 173, 175-179, 181-202 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,734,871 to Kleinerman ("Kleinerman"), "RIPscrip Graphics Protocol Specification," July 19, 1993 ("RIPscrip"), Microsoft Press' Computer Dictionary, 2nd Edition, 1993 ("Microsoft"), and U.S. Patent

No. 5,630,125 to Zellweger (“Zellweger”). For the reasons set forth below, Applicant respectfully traverses.

As set forth in Applicant’s previous reply, dated May 22, 2009, RIPscrip, Microsoft, and Zellweger do not teach or suggest at least “an application programming interface (API) configured to provide a generic client interface for communicating a functional request associated with [an] application function to any one of [a] plurality of available online services” as recited in independent claims 114, 133, 153, and 171. Since RIPscrip, Microsoft, and Zellweger do not teach or suggest an API as noted above, logically RIPscrip, Microsoft, and Zellweger cannot teach or suggest “wherein the third instructions receive via the API a response to the functional request from the online service in the background, thereby permitting the graphical user interface to continue operation” as further recited in independent claims 114, 133, 153, and 171. In the Office Action, the Examiner does not contest this distinction, but rather relies on Kleinerman to cure this deficiency of RIPscrip, Microsoft, and Zellweger. (Office Action p. 8-11.)

Kleinerman is directed to a method and apparatus for controlling the execution of an application in a host computer that is under the control of a secondary computer. (Kleinerman, 5:20-64.) More specifically, Kleinerman purports to allow a user to work with an application in the host computer via a user interface at the secondary computer. (*Id.*) The interaction between the user interface at the secondary computer and the application residing on the host computer is carried out, at least in part, by an Application Interface Module (AIM), an application program interface, and a component referred to as the Watch Host Patterns (WHOOOP). (Kleinerman, 5:65-6:43, 7:51-54.) The AIM resides on the secondary computer and communicates with the WHOOOP,

residing on the host computer, through the application program interface. (*Id.*) Kleinerman, at most, describes the functionality of the application program interface as “[a] mechanism to pass information from the WHOOP to the AIM, to manage displays at the [secondary computer], and to accept input from the secondary computer.” (Kleinerman, 7:51-54.)

In rejecting claims 114, 133, 153, and 171, the Examiner appears to equate, in part, the application program interface of Kleinerman with the application programming interface (API) recited in claims 114, 133, 153, and 171.¹ (Office Action, p. 8-10.) Applicant respectfully disagrees with this apparent contention. The application program interface of Kleinerman falls well short of providing the non-obvious and advantageous features of the API recited in claims 114, 133, 153, and 171. For example, Kleinerman does not teach or suggest that the application program interface is configured to communicate a functional request to an online service and receive “a response to the functional request from the online service in the background, thereby permitting the graphical user interface to continue operation” as recited in independent claims 114, 133, 153, and 171.

The Examiner appears to acknowledge that Kleinerman fails to teach this feature recited in claims 114, 133, 153, and 171. Specifically, the Examiner appears to assert that, although Kleinerman does not teach an API that is configured to receive “a response to [a] functional request from the online service in the background” that this feature,

¹ The Examiner, on page 10 of the Office Action, contends that Applicant previously argued “that Kleinerman *in effect* teaches away from API [sic] performing ‘in the background.’” Applicant respectfully submits that no such argument was made. Rather, Applicant previously argued that Kleinerman failed to teach or suggest an API that is configured to receive “a response to [a] functional request from [an] online service in the background” as recited in independent claims 114, 133, 153, and 171

without any specific hint or suggestion in Kleinerman, is nothing more than common knowledge and thus would have been obvious to a person of ordinary skill in the art. (Office Action, p. 11.) Applicant respectfully disagrees.

The Examiner improperly takes what appears to be Official Notice that the feature of claims 114, 133, 153, and 171, noted above, is common knowledge or well known in the art. “It would **not** be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” MPEP § 2144.03(A) (emphasis in original); *see also In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) (“[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.”).

Here, the Examiner alleges the fact, without any documentary evidence, that an API configured to receive “a response to [a] functional request from [an] online service in the background,” as recited in claims 114, 133, 153, and 171, was common knowledge or well known in the art. (Office Action, p. 11.) However, this alleged fact relates to “the state of the art” at the time of the earliest effective filing date of the instant application and is “subject to the possibility of rational disagreement among reasonable men.” *See In re Eynde*, 480 F.2d at 1370, 178 USPQ at 474. Thus, this is not the type of fact amenable to Official Notice, especially given that the earliest effective filing date for the instant application was fifteen years ago, when the internet was still in its infancy.

Without any documentary proof, Applicant contests the Examiner's assertion of alleged fact.

Moreover, an API that is configured to receive "a response to [a] functional request from the online service in the background," as recited in claims 114, 133, 153, and 171, provides for several non-obvious and advantageous benefits that are not taught or suggested by Kleinerman. For example, an API configured to receive a response to a functional request from an online service in the background may advantageously allow a user interface to continue operation in between the time a functional request is sent to an online service and a response to the functional request is received from the online service. This may provide for a more dynamic application, eliminating the need for start and stop interactions between a client application and an online service. In addition, because the response is received from the online service in the background, any interaction with the online service can be transparent to a user. Applicant is not aware that such background operations were in use or well known at the time of the earliest effective filing date of the instant application.

Thus, absent a reference demonstrating the aforementioned advantageous and non-obvious feature of claims 114, 133, 153, and 171 to be well known, the Examiner cannot properly rely on common knowledge in the art. MPEP § 2144.03(A).

For at least the foregoing reason, independent claims 114, 133, 153, and 171 are not rendered unpatentable over the combination of Kleinerman, RIPscrip, Microsoft, and Zellweger. Accordingly, Applicant respectfully requests that the rejection of claims 114, 133, 153, and 171 be reconsidered and withdrawn.

Dependent claims 116-122, 124-126, 128-131, 134-141, 143-145, 147-150, 152, 154-155, 157-161, 163-170, 172, 173, 175-179, 181-202 are similarly not rendered unpatentable over the combination of Kleinerman, RIPscrip, Microsoft, and Zellweger and for at least the same reasons as claims 114, 133, 153, and 171, from which they respectively depend, and further in view of their own features. Accordingly, Applicant respectfully requests the rejection of claims 116-122, 124-126, 128-131, 134-141, 143-145, 147-150, 152, 154-155, 157-161, 163-170, 172, 173, 175-179, 181-202 be reconsidered and withdrawn.

Kleinerman, RIPscrip, Microsoft, Zellweger, and Pettus

Claims 115, 132, 151, 154, 172, and 175-190 have been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over RIPscrip, Microsoft, Zellweger, Kleinerman, and U.S. Patent No. 6,031,977 to Pettus (“Pettus”). For the reasons set forth below, Applicant respectfully traverses.

Without acquiescing to the propriety of the asserted combination, Pettus does not cure the deficiencies of the RIPscrip, Microsoft, Zellweger, and Kleinerman with respect to independent claims 114, 133, 153, and 171 as noted above. Consequently, RIPscrip, Microsoft, Zellweger, Kleinerman, and Pettus does not support a § 103 rejection of independent claims 114, 133, 153, and 171. Dependent claims 115, 132, 151, 154, 172, and 175-190 are similarly not rendered unpatentable over the combination of RIPscrip, Microsoft, Zellweger, Kleinerman, and Pettus for at least the same reasons as claims 114, 133, 153, and 171, from which they respectively depend, and further in view of their own features. Accordingly, Applicant respectfully requests the rejection of claims 115, 132, 151, 154, 172, and 175-190 be reconsidered and withdrawn.

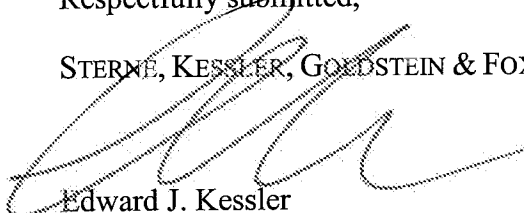
Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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